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DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

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SECOM-D-081
27 March 1985

MEMORANDUM FOR: General Counsel CIA

FROM: [REDACTED]

Chairman

SUBJECT: Leak Legislation

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1. Action has been assigned to OGC on questions on leak legislation by the SSCI. While this is entirely proper, I would like to take the opportunity to point out important factors which may not be addressed if the answers are confined solely to the legal aspects of the situation.

2. Even though we have always maintained that the Espionage Act applies to all unauthorized disclosures of classified information, there has never been a successful prosecution under that law. The public perception of leaks, meanwhile, has deteriorated to a point that some people seriously question the applicability of Title 18, Sections 793-794 to leaks.

3. Even though the Espionage Act covers unauthorized disclosures of classified information generally, there is a persistent belief among many, including media attorneys, that it applies only to disclosures to foreign agents. For this reason, the Intelligence Community has sought, for several years, to obtain legislation dealing specifically with unauthorized public disclosures of national security information. Such a law would be clear in its intent and would facilitate the SSCI's stated objective of penalizing leakers. Passage of such an act would demonstrate the will of the Congress to combat the pernicious practice of disclosing government secrets to the press and, indirectly, to foreign agents.

4. The effect of Judge Young's ruling on potential leakers is difficult to gauge. Persons granted access to sensitive classified data are required to sign an agreement which advises them that violation of secrecy regulations may subject them to prosecution under the Espionage Act. Although such agreements have been in use for decades, the Espionage Act has not heretofore served as a sufficient deterrent.

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5. It would be illogical to disagree with the proposition that divulgence of secrets in the press is as dangerous to the security of the United States as their release to foreign agents. Public disclosure of classified information is tantamount to disclosure of every foreign intelligence service in the world.

6. Passage of an unauthorized disclosure act would help bring about a badly needed change in perception and attitude about leaks of classified information. It would strengthen the government's position in investigating leaks and stimulate the cooperation of those who may now be confused as to whether leaks to the press are, in fact, illegal.

7. Even though the Espionage Act applies to leaks, it has not served as a deterrent. Just as laws on civil rights often deal with behavior which already is covered elsewhere, we have reached a point where a specific act is needed to deal explicitly with disclosures of classified information not directly transmitted to a foreign power. From a narrow legal standpoint, the Espionage Act may adequately cover such an act. In today's society, however, there is a need to clarify and reinforce the public understanding of the unlawful nature of such behavior. Passage of an unauthorized disclosure law would not preclude prosecution under the Espionage Act, but would provide a law specifically directed at penalizing those who violate the trust reposed in them by virtue of their security clearances and approvals. This additional tool is needed if we are to remedy this serious threat to security.

8. Regardless of what statute may be applied, the publication of classified information has reached such a serious state that action is needed now. The investigation of unauthorized disclosures is frustrated for many reasons. One is the prevailing atmosphere of tolerance toward leaks and leakers. The philosophy that leaks are a fact of life that must be accepted is widely held. The notion that leakers will not be penalized, even if they are identified, is another obstacle to alleviating the situation.

9. Acquiescence is a serious problem. Decisive action by the Congress would go a long way toward convincing people to cooperate fully in the effort to stop the unauthorized disclosure of classified information. Such cooperation is indispensable to the successful investigation of leaks. And unless we are more successful in identifying those responsible for these unlawful acts, we will continue to be unable to deal effectively with the problem.

10. Your consideration of these points in preparing the response to SSCI questions on leaks would be greatly appreciated.

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cc: DD/ICS
D/OLL
D/OPA